

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

Crl.MC.No. 3911 of 2006()

ST.542/2006 of J.F.C.M-VI, (SPL.F.C.M FOR THE TRIAL OF MARAD CASES)
KOZHIKODE.

PETITIONER: ACCUSED

ANSARI, S/O.ALLYARKUNNU RAVUTHAR,
SHIJIN NIVAS, PARAKKODE P.O., ADOOR,
PATHANAMTHITTA.

BY ADV. SRI.THOMAS ANTONY
SRI.TITUS MANI

RESPONDENTS/COMPLAINANT & STATE:

1. M.S.DOLPHIN FINANCIAL SERVICES,
E.K.P.COMPLEX, OPP.PAICO, KALLAI ROAD,
KOZHIKODE REPRESENTED BY POWER OF ATTORNEY
HOLDER K.GIRISHAN, S/O.BHASKARAN, "GREENS",
NEAR WATER TANK, PUTHIYARA P.O., CALICUT.
2. P.M.FINANCE, NO.1 CHANDRAPPA MUDALI
STREET, 1ST FLOOR, SOWCARPT, CHENNAI-60007.
3. STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.3911 of 2006

Dated this the 29th day of November 2006

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The first respondent herein is the complainant. According to the learned counsel for the petitioner, even the allegation in the complaint is only that the petitioner had issued the cheque to the first respondent for discharge of the liability due to the second respondent. The first respondent allegedly is the collecting/recovery agent of the second respondent.

2. The cheque, according to the petitioner, was handed over as a signed blank cheque to the second respondent and not to the first respondent at all. The name of the payee has been entered unauthorisedly in the said cheque to show that the first respondent is the payee. For these reasons and in these circumstances, the complaint may be quashed, it is urged.

3. I shall scrupulously avoid any detailed discussion on the liability under Section 138 of the N.I.Act. But I must say that I do not find any satisfactory reason to invoke the powers under Section 482 Cr.P.C to prematurely terminate the proceedings against the petitioner under Section 138 of the N.I.Act. The contention that the cheque was not issued to the first respondent and was issued as a blank signed cheque to the second respondent is definitely one which

must be raised and substantiated in the trial. It is the learned Magistrate, after trial, who should answer that question. At this stage and with the available inputs and by invoking the powers under Section 482 Cr.P.C, the prayer for quashing the complaint cannot be entertained. Those disputed question of fact cannot be resolved in proceedings under Section 482 Cr.P.C before this court.

4. The learned counsel for the petitioner submits that the petitioner is a person, having his permanent residence at Pathanamthitta and if personal appearance of the petitioner on all dates of posting were insisted by the learned Magistrate at Kozhikode, where the criminal prosecution is initiated, it will result in great prejudice and loss to the petitioner. It is a summons case. The petitioner can apply for exemption from personal appearance. I have no reason to assume that the learned Magistrate would not consider the same, in accordance with law and on merits. Every court must do the same. Unnecessary insistence on personal appearance of the indictees ought to be avoided unless the progress of the case really requires such presence of the indictees.

With the above observation, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006